

COMMONWEALTH OF KENTUCKY

RECEIVED

BEFORE THE PUBLIC SERVICE COMMISSION

AUG 30 2006

PUBLIC SERVICE
COMMISSION

In the Matter of:

CONSIDERATIONS OF THE REQUIREMENTS)	
OF THE FEDERAL ENERGY POLICY ACT OF)	
2005 REGARDING TIME-BASED METERING,)	CASE NO. 2006-00045
DEMAND RESPONSE AND)	
INTERCONNECTION SERVICE)	

BRIEF OF KENTUCKY POWER COMPANY

Kentucky Power Company for its brief in this matter states:

A. The Commission Should Not Impose Uniform Interconnection Standards.

Section 1254 of the Energy Policy Act of 2005 mandates that interconnection service be made available to electric utility customers “based upon the standards developed by the Institute of Electrical and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time.” 16 U.S.C. 2621(d)(15). It further provides that agreements and practices are to be established that “promote current best practices of interconnection for distributed generation” and that all agreements and procedures must be “just and reasonable and not unduly discriminatory or preferential.” *Id.* Finally, the Act establishes a schedule for state commissions to consider the requirements imposed by 16 U.S.C. 2621(d)(15) and determine whether “each electric utility for which ... [this Commission] has ratemaking authority” is meeting the requirements of the statute. 16 U.S.C. 2622(b).

On its face, nothing about 16 U.S.C. 2621(d)(15) envisions much less mandates that a single interconnection agreement be prescribed for utilities located in the Commonwealth or that

a single set of interconnection procedures be imposed by this Commission. Indeed, if Congress had so intended it would have been simple enough to mandate that “each State commission shall prescribe an interconnection agreement and procedures that ...” Instead, forsaking a “one-size” fits all” prescriptive approach, Congress employed a utility-by-utility methodology in which it imposed upon each utility the obligation to offer interconnection agreements and employ procedures that meet certain broad requirements. For example, subsection 15 begins “[e]ach electric utility shall make available ...” 16 U.S.C. 2621(d)(15) (emphasis supplied.) Even more telling is that in lieu of prescribing uniform criteria for interconnection agreements, Congress required only that “[i]nterconnection services shall be *offered based upon ... IEEE Standard 1547....*” *Id.* Thus, while establishing IEEE Standard 1547 as the benchmark against which interconnection agreements and procedures are to be measured, the statute’s use of the expansive phrase “based upon” in lieu of more exclusionary or prescriptive language makes clear that a uniform agreement and procedures are neither contemplated nor required.

Similarly, the statutory requirement that “best practices” be utilized, as opposed to Congress imposing specifically defined standards and terms, makes clear Congress’ intent not to require uniform agreements and procedures. Finally, the determination this Commission is obligated to make is phrased in terms of a utility-by-utility determination of whether the agreements and procedures employed meet the broad standards imposed by the statute: “each State regulatory authority (with respect to each electric utility for which it has ratemaking authority)....” 16 U.S.C. 2622(c).

Practical considerations also argue against the imposition of a single statewide agreement or procedure. Each utility’s electric power system is uniquely designed, constructed and operated. The imposition of a single agreement and set of procedures very well could run

contrary to the statutory mandate that best practices be employed. *See*, Prefiled Testimony of Stephen E. Early at 10-11. Likewise, questions of what is “just and reasonable and not unduly discriminatory and preferential” are individualized determinations that must be made on a utility by utility basis.

In any event, the record is clear: Kentucky Power, along with most if not all Kentucky jurisdictional electric utilities, presently offers interconnection service based upon IEEE Standard 1547:

Q: Is the interconnection service KPCo offers based upon IEEE Standard 1547?

A. Yes. AEP participated in the working group that developed IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems. AEP operating companies, including KPCo ... have adopted this IEEE Standard as the basis for their interconnection agreements.

Prefiled Testimony of Stephen E. Early at 9-10. *See also*, Prefiled Testimony of Paul A. Dolloff at 9; Prefiled Testimony of Michael T. Leake at 2-3. It also is uncontroverted that Kentucky Power’s practices and procedures employ the best practices for interconnection for distributed generation. Prefiled Testimony of Stephen E. Early at 10. In fact, Kentucky Power’s process and procedures “contain the basic elements found in practices stipulated in the model code adopted by the National Association of State Utility Regulatory Commissioners....” *Id.* Finally, Kentucky Power interconnection agreements are just and reasonable and are not unduly preferential or discriminatory. *Id.* For example, through the use of a prescreening process along with a simplified application and interconnection agreement Kentucky Power is able to expedite and limit the cost of interconnection for small generators that are unlikely to affect Kentucky Power’s distribution system. Prefiled Testimony of Stephen E. Early at 10, 6-8.

Notwithstanding the record before the Commission, the Cumberland Chapter of the Sierra Club unconvincingly argues in unsworn comments¹ that the Commission must impose a “uniform [interconnection] standard for all jurisdictional utilities across the Commonwealth.” Sierra Club Comments at 2. Its arguments, which for the most part are based upon a May, 2000 Report of the National Renewable Energy Laboratory (“NREL”), are not well taken.

First, it appears the Sierra Club may misconceive the nature of IEEE Standard 1547, which is not the all-inclusive prescriptive standard the Sierra Club believes. Prefiled Testimony of Travis D. Housely at 5; Prefiled Testimony of Stephen E. Early at 11. Thus, if this Commission were to prescribe a uniform standard there still would need to be differences among the utilities’ agreements and practices. *See*, Prefiled Testimony of Stephen E. Early at 11-12. Second, the record demonstrates that Kentucky Power, along with at least East Kentucky Power Cooperative Corporation, Kentucky Utilities Company and Louisville Gas and Electric Company, employ agreements based upon IEEE Standard 1547. Prefiled Testimony of Stephen E. Early at 9-10. *See also*, Prefiled Testimony of Paul A. Dolloff at 9; Prefiled Testimony of Michael T. Leake at 2-3. Thus, the Sierra Club’s demand may be a remedy in search of a need.

More fundamentally, the Sierra Club’s reliance upon the May, 2000 NREL Report² is misplaced. The report predates the adoption of IEEE Standard 1547 by three years and thus may be describing a situation that no longer exists. Even more importantly, there is no evidence in the report that the practices detailed exist in Kentucky. None of the 58 instances in which the authors claim that a utility erected market entry barriers involved Kentucky jurisdictional

¹ Kentucky Power recognizes that such unsworn comments do not technically constitute evidence. Nevertheless, the Sierra Club’s comments are particularly subject to reliability problems in that they are not subject to cross-examination and appear to be premised upon double and perhaps even triple hearsay (the anecdote concerning Berea College Utilities) and raw speculation (the suggestion that “[o]ther potential developers of DG in the Commonwealth could probably relate similar anecdotes.”) *See*, Sierra Club Comments at 6.

² B. Alderfer, M. Eldridge, T. Starrs, *Making Connections Case Studies of Interconnection Barriers and Their Impact on Distributed Power Projects* (National Renewable Energy Laboratory May 2000).

utilities. NREL Report at 7-8. While this may be an artifact of the study's failure to include any Kentucky distribution projects, such an absence of evidence is hardly an adequate basis for taking the action demanded by the Sierra Club.

Beyond the NREL Report, the Sierra Club's comments for the most part are a criticism of the rates paid for power delivered to the electric grid as a result of Kentucky's low rates for electric service – a fact that heretofore has not been considered to be a problem by this Commission or Kentucky ratepayers. *See*, Sierra Club Comments at 3-8. The Sierra Club seeks to circumvent the effect of these low rates by demanding that generation other than coal-fired base load units be subsidized.

On its face, such a subsidy scheme would contravene the requirement under 16 U.S.C. 2621(d)(15) that interconnection agreements and practices be non-preferential and non-discriminatory. In addition, such subsidies also run counter to Title IV of the Act which seeks to increase the use of coal as an energy source while reducing air pollution. *See*, Pub. L. 109-58 §§ 401-437. Efforts to interject subsidy issues into this proceeding impermissibly expand the scope beyond that contemplated by 16 U.S.C. 2621(d)(15) and 16 U.S.C. 2622(c), which focus on IEEE Standard 1547. That standard, of course, primarily is concerned with technical and operating issues and not pricing considerations.

Efforts to establish new rates to be paid by utilities also will unduly complicate these proceedings and unnecessarily burden the Commission. Any such proceedings by definition will need to be individualized (because each utility's avoided cost will differ) and may extend these proceedings beyond the period for Commission action under the statute. *See*, 16 U.S.C. 2622(c). In addition, many of the avoided costs (or benefits gained) the Sierra Club argues will come about through the subsidies it seeks are poorly defined, difficult to measure or completely

unsupported in the record. No better example exists than the Sierra Club's statement – made without specificity or evidence—that a ten-fold increase in the price paid by utilities for distributed generation “will provide enough economic benefits to the grid so as to constitute the subsidization of non-DG customers by DG developers.” Sierra Club Comments at 8. Certainly such a remarkable proposition should be premised upon something more than the policy agenda of an advocacy group.

In summary, there is no need for imposition of uniform interconnection procedures or the prescription of a uniform interconnection agreement. Certainly, Kentucky Power

currently has processes and procedures in place to provide interconnection service to its customers. Interconnection service to the distribution system is based upon IEEE standard 1547. The interconnection process and procedures used contain the basic elements found in practices stipulated in the model code adopted by the National Association of State Utility Regulatory Commissioners. The process and procedures are overseen at an AEP System level to insure that applicants are treated fairly, reasonably and non-preferentially. Therefore, an interconnection standard is already in place that complies with the requirements of the Energy Policy Act of 2005.

Prefiled Testimony of Stephen E. Early at 12. To the extent the Commission nevertheless elects to impose a statewide standard, Kentucky Power suggests that the Commission require each utility to use agreements and procedures based upon IEEE Standard 1547 while allowing utilities the flexibility to tailor the process and procedures to their individual situations. *Id.* at 10.

Alternatively, if the Commission believes a uniform standard is required it should be developed through an informal process in which the Commission would act as a facilitator.

B. It Is Not Appropriate To Impose Time Based Rates, Metering And Communications By Commission Order.

Section 1252 of the Energy Policy Act mandates that the Commission investigate and determine “whether it is appropriate” to require time based rates, metering and communications. 16 U.S.C. 2621(d)(14)(F). The record is clear that such a requirement is not appropriate.

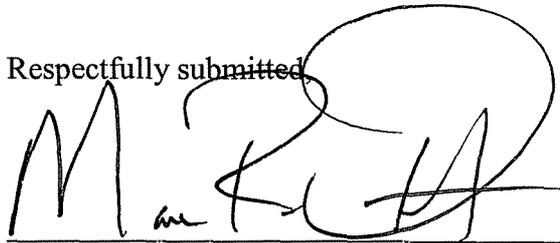
As Mr. Roush testified, Kentucky Power offers time-based and time-differentiated tariffs as well as load management options that permit customers to reduce their on-peak usage. Prefiled Testimony of David. M. Roush at 3; Exhibit DMR-1. As such, Kentucky Power believes it presently is meeting the requirements of 16 U.S.C. 2621(d)(14)(A). Prefiled Testimony of David M. Roush at 4. Nevertheless, customer response has been minimal. *Id.* Less than one-half of one percent of Kentucky Power’s customers take service under these provisions. *Id.* Moreover, the eighteen industrial customers (of the total 570 customers who utilize time-based tariffs) who take service under the C.I.P.-T.O.D. tariff account for more than 99% of the total kilowatt hours utilized by customers taking service under time-based tariffs. *Id.* at 5. The experience of at least one other Kentucky jurisdictional utility is similar. *See*, Prefiled Testimony of Russ Pogue at 3.

Absent greater demand, it is not appropriate to impose the additional costs associated with time based metering and communications – which extends beyond the not insignificant costs of the meters to include development of a communications infrastructure and modifications of Kentucky Power’ metering and billing systems – on Kentucky Power’s rate payers. *Id.* at 6. Rather, smart metering should be installed only where it is cost effective to do so, as Kentucky Power has done in connection with certain industrial customers. *Id.*

Conclusion

For the reasons set forth hereinabove, Kentucky Power Company respectfully requests the Commission to enter an Order (i) declaring that Kentucky Power Company has complied with the requirements of 16 U.S.C. 2621(d)(15); (ii) declining to impose statewide requirements for interconnection agreements; and (iii) declaring that it is not appropriate to implement the standards set out in 16 U.S.C. 2621(d)(14)(A), (C).

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line. The signature is stylized and somewhat cursive.

Mark R. Overstreet
STITES & HARBISON, PLLC
421 West Main Street
P.O. Box 634
Frankfort, Kentucky 40602-0634
Telephone: 502-223-3477

COUNSEL FOR:
KENTUCKY POWER COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Brief of Kentucky Power Company was served via United States First Class Mail, postage prepaid, upon:

Allen Anderson
South Kentucky RECC
925-929 North Main Street
P.O. Box 910
Somerset, Kentucky 42502-0910

Jackie B. Browning
Farmers RECC
504 South Broadway
P.O. Box 1298
Glasgow, Kentucky 42141-1298

Elizabeth E. Blackford
Lawrence W. Cook
Office of the Attorney General
Utility & Rate Intervention Division
Suite 200
1024 Capital Center Drive
Frankfort, Kentucky 40601-8204

Carol H. Fraley
Grayson RECC
109 Bagby Park
Grayson, Kentucky 41143

Larry Hicks
Salt River Electric Cooperative Corp.
111 West Brashear Avenue
P.O. Box 609
Bardstown, Kentucky 40004

Tyson A. Kamuf
Sullivan, Mountjoy, Stainback
& Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, Kentucky 42302-0727

Dudley Bottom, Jr.
Shelby Energy Cooperative, Inc.
620 Old Finchville Road
Shelbyville, Kentucky 40065

Sharon K. Carson
Jackson Energy Cooperative
115 Jackson Energy Lane
McKee, Kentucky 40447

Kerry K. Howard
Licking Valley RECC
271 Main Street
P.O. Box 605
West Liberty, Kentucky 41472

Lisa Kilkelly
Legal Aid Society
424 West Muhammad Ali Boulevard
Louisville, Kentucky 40202

Daniel W. Brewer
Bluegrass Energy Cooperative Corp.
1201 Lexington Road
P.O. Box 990
Nicholasville, Kentucky 40340-0990

Elizabeth L. Cocanougher
E.ON U.S., LLC
220 West Main Street
P.O. Box 32010
Louisville, Kentucky 40232-2010

Paul G. Embs
Clark Energy Cooperative, Inc.
2640 Ironworks Road
P.O. Box 748
Winchester, Kentucky 40392-0748

Ted Hampton
Cumberland Valley Electric, Inc.
Highway 25E
P.O. Box 440
Gray, Kentucky 40734

James L. Jacobus
Inter-County Energy Corporation
1009 Hustonville Road
P.O. Box 87
Danville, Kentucky 40423-0087

Robert M. Marshall
Owen Electric Cooperative, Inc.
8205 Highway 127 North
P.O. Box 400
Owenton, Kentucky 40359

James M. Miller
Sullivan Mountjoy, Stainback
& Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, Kentucky 42302-0727

Kendrick R. Riggs
Stoll Keenon Ogden, PLLC
1700 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202

Anthony P. Overby
Fleming-Mason Energy Cooperative
P.O. Box 328
Flemingsburg, Kentucky 41041

Bobby D. Sexton
Big Sandy RECC
504 11th Street
Paintsville, Kentucky 41240-1422

Michael L. Miller
Nolin RECC
411 Ring Road
Elizabethtown, Kentucky 42701-8701

Barry L. Myers
Taylor County RECC
100 West Main Street
P.O. Box 100
Campbellsville, Kentucky 42719

Charles A. Lile
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P.O. Box 707
Winchester, Kentucky 40392-0707

David A. Spainhoward
Big Rivers Electric Corporation
201 Third Street
P.O. Box 24
Henderson Kentucky 42420

Jason R. Bentley
McBrayer, McGinnis, Leslie
& Kirkland, PLLC
Suite 308
305 Ann Street
Frankfort, Kentucky 40601

Anne Marie Regan
Office of Kentucky Legal Services
1139 East Broadway
Louisville, Kentucky 40204

Allison Lankford
McBrayer, McGinnis, Leslie
& Kirkland, PLLC
Suite 1000
201 East Main Street
Lexington, Kentucky 40507

David F. Boehm
Kurt J. Boehm
Boehm Krutz & Lowry
Suite 1510
36 East Seventh Street
Cincinnati, Ohio 45202

Ralph Combs
Suite 5B
Untied Bank Square
Versailles, Kentucky 40383

Rocco O. D'Ascenzo
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, Ohio 45202

John J. Finnigan, Jr.
The Union Light, Heat
and Power Company
139 East Fourth Street
Cincinnati, Ohio 45202

Scott H. DeBroff
Smigel, Anderson & Sacks
River Chase Office Center
4431 North Front Street
Harrisburg, Pennsylvania 17110

W. Duncan Crosby, III
Stoll, Keenon & Ogden, PLLC
1700 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202

Mark A. Bailey
Kenergy Corp.
3111 Fairview Drive
P.O. Box 1389
Owensboro, Kentucky 42302

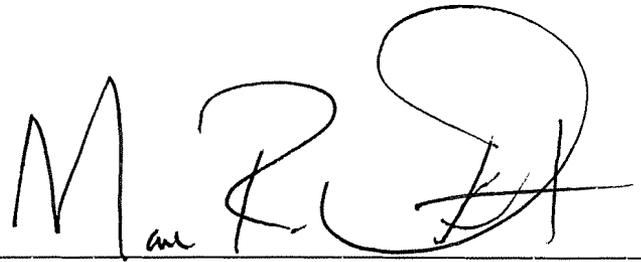
G. Kelly Nuckols
Jackson Purchase Energy Corporation
2900 Irvin Cobb Drive
P.O. Box 4030
Paducah, Kentucky 42002-4030

Burns E. Mercer
Meade County RECC
P.O. Box 489
Brandenburg, Kentucky 40108-0489

Kent Blake
Louisville Gas & Electric Company
220 West Main Street
P.O. Box 32010
Louisville, Kentucky 40232-2010

Michael S. Beer
Kentucky Utilities Company
% Louisville Gas & Electric Company
220 West Main Street
P.O. Box 32010
Louisville, Kentucky 40232-2010

on this the 30th day of August, 2006.

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written above a horizontal line. The signature is stylized, with a large 'M' and 'R' and a large 'O'.

Mark R. Overstreet

KE057:KE185:14613:2:FRANKFORT